IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1412 of 2001

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JETHABHAI LALJIBHAI CHAUDHARY

Versus

STATE OF GUJARAT & Ors

Appearance:

1. Special Civil Application No. 1412 of 2001

MR NIKHIL KARIEL for TANNA ASSOCIATES for Petitioner

MR MR MENGDEY AGP for Respondents

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 18/08/2004

ORAL JUDGEMENT

Heard the learned advocates.

The petitioner, a former employee of the State Government claims right to receive pension pursuant to his resignation from service.

On 1st May, 1957, the petitioner was appointed as Work-charge Assistant. In course of time, he came to be appointed as Overseer in the temporary establishment. On 31st October, 1976 he resigned from service. His resignation became effective on 31st October, 1976. In the year 2000, the petitioner preferred Special Civil Application No. 3253 of 2000 before this Court under Article 226 of the Constitution of India and claimed right to receive pension. The said petition came to be disposed of on 19th April, 2000 [Coram : Ravi R. Tripathi, J.] with a direction to the petitioner to apply to the Executive Engineer, the respondent no. 2 herein. The said respondent was directed to consider such application. The application made by the petitioner came to be rejected on 3rd May, 2000. Feeling aggrieved, the petitioner has preferred the present petition.

Learned advocate Mr. Kariel has submitted that the petitioner being a Government servant would be governed by the Revision of Pension Rules, 1950 [hereinafter referred to as, "the Pension Rules"]. The Pension Rules do not specifically exclude the Government servants who resign from service from the benefit of pension. The petitioner is, therefore, entitled to the benefit of pension inspite of his tendering resignation. In support of this contention, Mr. Kariel has relied upon the judgment of the Hon'ble Supreme Court in the matter of Union of India & Ors. vs. Lt. Col. P.S. Bhargava [AIR 1997 SC 565].

In the above referred judgment, the Hon'ble Court was called upon to examine the pension regulations applicable in case of Army Officers. The respondent in that case, an Army Officer, had applied for permission to resign on 2nd January, 1984. The said resignation was accepted on 24th July, 1984. The Officer was informed that upon his resignation, he would not be entitled to gratuity, pension, leave, etc. Thereupon, the officer applied for withdrawal of the resignation which was not accepted. The officer, therefore, approached the Hon'ble High Court at Gauhati and claimed, inter alia, right to receive pension on his resignation. The said petition came to be allowed by the High Court. In appeal to the Hon'ble Supreme Court, the Hon'ble Court examined the relevant pension regulations. The Hon'ble Court observed that Regulation 16 (b) specifically provided for grant of pension after qualifying service or forfeiture of pension

in case the officer was dismissed or removed from service and in case the officer is called upon to retire or resign or in the event of his refusing to do so, is retired from or gazetted out of the service. In view of the said specific Regulation, the Hon'ble Court held that, "..Regulation 16 does not cover a case of voluntary resignation. Regulation 16 (b) does refer to a case where an officer who has to his credit the minimum period of qualifying service being called upon to resign whose pension can be reduced. Had the Regulation intended to take away the right of a person to the terminal benefits on his voluntary resigning, then a specific provision similar to Regulation 16 (b) would have been incorporated in the Regulations but this has not been done." Consequently, the Hon'ble Court held that the Officer was entitled to pensionary benefit pursuant to his resignation after minimum qualifying service. Learned advocate Mr.Kariel has not pointed out analogous provisions in the Pension Rules. The judgment of the Hon'ble Supreme Court, therefore, shall have no applicability on the facts of the present case.

The Pension Rules envisage payment of pension to a Government servant who retires or is retired from service. Thus, the condition precedent for receiving pension under the Pension Rules is that the Government servant shall have retired from service. Indisputably, the petitioner did not retire from service. The petitioner, therefore, cannot claim right to receive pension under the Pension Rules. Besides, the claim made by the petitioner is grossly belated. The petitioner resigned from service on 31st October, 1976. He did not raise claim for pension until the year 2000. Thus, the petitioner's claim is also barred by delay, latches and acquiescence.

No other contention is raised before me. The petition is dismissed with costs. Rule is discharged.

{Miss R.M Doshit, J.}